

1 T. Marano
2 UNITED STATES BANKRUPTCY DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4 -----x
5 In re: Case No. 12-12020
6 RESIDENTIAL CAPITAL, LLC, et al., (MG)
7 Debtors, Jointly Administered
8 -----x
9 RESIDENTIAL CAPITAL, LLC, et al.,
10 Plaintiffs,
11 vs. Adversary Proceeding
12 UMB BANK, N.A., as successor No. 13-01343 (MG)
13 indenture trustee under that
14 Certain Indenture, dated as of
15 June 6, 2008; and WELLS FARGO BANK,
16 N.A., Third Priority Collateral
17 Agent under that Certain Amended
18 and Restated Third Priority Pledge
19 and Security Agreement and
20 Irrevocable Proxy, dated as of
21 December 30, 2009,
22 Defendants.
23 -----x
24 (CAPTION CONTINUED ON NEXT PAGE)

25
18 VIDEOTAPED DEPOSITION OF TOM MARANO
19 New York, New York
20 Monday, November 11, 2013

21
22 Reported by:
23

24 THOMAS A. FERNICOLA, RPR
25 JOB NO. 67837

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's Counter-Designation
Orange Highlighting = Joint Designation

1 T. Marano
2 (Caption Continued as follows:)

3 OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, on behalf of the
4 estates of the Debtors,

Plaintiff, Adversary Proceeding
 No. 13-01277 (MG)

UMB BANK, N.A., as successor
Indenture Trustee under that
Certain Indenture, dated as of
June 6, 2008; and WELLS FARGO BANK,
N.A., Third Priority Collateral
Agent and Collateral Control Agent
under that Certain Amended
and Restated Third Priority Pledge
and Security Agreement and
Irrevocable Proxy, dated as of
December 30, 2009,

Defendants.

-----X-----

November 11, 2013

2:00 p.m.

Videotaped Deposition of TOM MARANO,
held at the law offices of Morrison & Foerster,
LLP, 1290 Avenue of the Americas, New York, New
York, before Thomas A. Farnicola, a Registered
Professional Reporter and Notary Public of the
State of New York.

1 T. Marano

2 A P P E A R A N C E S:

3

4 CARPENTER LIPPS & LELAND

5 Attorneys for Debtors and the Witness

6 280 Plaza

7 280 North High Street

8 Columbus, Ohio 43215

9 BY: JEFFREY LIPPS, ESQ.

10

11

12 KIRKLAND & ELLIS

13 Attorneys for Ally

14 655 Fifteenth Street, N.W.

15 Washington, D.C. 20005

16 BY: DANIEL DONOVAN, ESQ.

17

18

19 ALSTON & BIRD

20 Attorneys for Wells Fargo Bank, N.A.

21 as Trustee

22 90 Park Avenue

23 New York, New York 10016

24 BY: MICHAEL JOHNSON, ESQ.

25

1 T. Marano

2 A P P E A R A N C E S (Continued):

3

4 MORRISON & FOERSTER

5 Attorneys for Debtors

6 1290 Avenue of the Americas

7 New York, New York 10104

8 BY: DANIEL MATZA-BROWN, ESQ.

9

10

11 MILBANK TWEED HADLEY & MCCLOY

12 Attorneys for the Ad Hoc Group of

13 Junior Secured Noteholders

14 One Chase Manhattan Plaza

15 New York, New York 10005

16 BY: RACHEL PENSKI FISSELL, ESQ.

17 HAILEY DEKRAKER, ESQ.

18 JONATHAN OSTRZEGA, ESQ.

19

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1 T. Marano

2 A P P E A R A N C E S (Continued):

3

4 KELLEY DRYE & WARREN

5 Attorneys for UMB Bank

6 101 Park Avenue

7 New York, New York 10178

8 BY: BENJAMIN FEDER, ESQ.

9 (Telephonically)

10

11

12

13 ALSO PRESENT:

14 MICHELLE MAMAN,

15 Cadwalader Wickersham & Taft

16 (Telephonically)

17 LEM LATTIMER, Videographer.

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1 T. Marano

2 THE VIDEOGRAPHER: This is the
3 videotaped labeled No. 1 of the videotaped
4 deposition of Tom Marano, in the matter of
5 In Re: Residential Capital, LLC.

6 We are now going on the record. The
7 time is 2:00.

8 Will counsel please state your
9 appearances for the record.

10 MR. LIPPS: Jeffrey Lipps, Carpenter
11 Lipps & Leland, representing the Debtors
12 and the witness.

13 MR. MATZA-BROWN: Daniel
14 Matza-Brown, Morrison & Foerster, on
15 behalf of the Debtors.

16 MS. FISSELL: Rachel Penski Fissell,
17 on behalf of the ad hoc group of Junior
18 Secured Noteholders.

19 MS. DeKRAKER: Hailey DeKraker,
20 Milbank Tweed Hadley & McCoy, for the
21 same.

22 MR. OSTRZEGA: Jonathan Ostrzega,
23 also for the ad hoc group of Junior
24 Secured Noteholders.

25 THE VIDEOGRAPHER: Thank you.

1 T. Marano

2 Will the court reporter please swear
3 the witness in.

4 MR. FEDER: Benjamin Feder, Kelley
5 Drye & Warren, on behalf of UMB Bank.

6 (A Discussion was Held off the
7 Record.)

8

9 T O M M A R A N O ,

10 called as a witness, having been duly sworn
11 by a Notary Public, was examined and
12 testified as follows:

13 BY THE REPORTER:

14 Q. Please state your full name and
15 address for the record.

16 A. Tom Marano, 111 Oxford Drive,
17 Tenafly, New Jersey 07670.

18

19 EXAMINATION BY MS. FISSELL:

20 Q. Good afternoon, Mr. Marano.

21 A. Good afternoon.

22 Q. So I understand that you've been
23 deposed a few times before.

24 A. Yes.

25 Q. Okay.

1 T. Marano

2 So I won't go over the ground rules.

3 I'll just say if you don't understand any of
4 my questions, please let me know.

5 A. Okay.

6 Q. So before we get started, I just
7 want to go over some definitions to make sure
8 we're on the same page.

9 When I refer to the JSNs, I'll be
10 referring to anyone holding a Junior Secured
11 Noteholders issued by ResCap, LLC in 2008.

12 Okay?

13 A. Okay.

14 Q. The ad hoc group will refer to the
15 JSNs who have formed the group that has hired
16 White & Case, and Milbank and Houlihan Lokey.

17 A. Okay.

18 Q. And the Debtors, we'll refer to each
19 of the ResCap entities that are subject to the
20 bankruptcy proceeding in the SDNY, including
21 officers, directors, professionals, employees.

22 A. Okay.

23 Q. What did you do to prepare for
24 today's deposition?

25 A. I met with the gentleman here for

1 T. Marano

2 four or five hours on Thursday or Friday of
3 last week, and I met with him for about 45
4 minutes today.

5 Q. And did you review any documents in
6 advance of today's deposition?

7 A. I did review a few documents, yes.

8 Q. What documents were those?

9 A. There were a couple of e-mails. I
10 think that was mostly it, just e-mails.

11 Q. And what is your current role with
12 the Debtors?

13 A. I am currently the chairman of
14 ResCap.

15 Q. When did you become chairman?

16 A. I was the nonexecutive chairman back
17 in 2 -- in spring of 2008. I became chairman
18 and CEO in the summer of 2008. And I resigned
19 as CEO in May of 2013, but retained the title
20 as chairman.

21 Q. And do you hold any other jobs at
22 this time?

23 A. No.

24 Q. What are your responsibilities as
25 chairman?

1 T. Marano

2 A. I host regular board meetings of the
3 ResCap board of directors, I will occasionally
4 assist Tammy Hamzehpour, Lew Kruger, other
5 members of the company in market-related
6 questions and activities.

7 Q. And so while you were CEO of ResCap,
8 you also served as chief capital markets
9 officer and chief mortgage officer of AFI?

10 A. That's correct.

11 Q. You served in that dual role between
12 May 2009 and May 2012?

13 A. That time period is approximately
14 correct.

15 Q. Can you be more specific?

16 A. I'm not sure if it was April of 2009
17 or May 2009, but it's within a month, and it
18 ended -- the dual role ended on May of 2012.

19 Q. With the filing of the petition?

20 A. Correct.

21 Q. How were you compensated when you
22 had the dual role?

23 A. I'm not sure I understand the
24 question.

25 Q. What were the components of your

1 T. Marano

2 compensation while you held the dual role at
3 AFI and ResCap?

4 MR. LIPPS: Do you want to know for
5 each position?

6 BY MS. FISSELL:

7 Q. Were you compensated separately for
8 each position?

9 A. No.

10 Q. So what was your compensation? Was
11 it a combination of stock and cash and --

12 A. Oh, okay.

13 Yes. It was a combination of cash
14 and deferred stock.

15 Q. Deferred stock in AFI?

16 A. Yes.

17 Q. So, broadly, if AFI did well, you
18 did well compensation wise?

19 MR. LIPPS: Objection to form.

20 Go ahead.

21 A. It -- the decision of what to pay me
22 was a function of how ResCap did, how AFI did,
23 and how the capital markets in the area did.
24 They looked at multiple components.

25 Q. Right.

1 T. Marano

2 But because part of your
3 compensation was AFI stock, your compensation
4 was tied, to the extent it was made up of AFI
5 stock, to the performance of AFI?

6 MR. LIPPS: Objection. Asked and
7 answered.

8 A. I already answered it. It all rolls
9 together and was -- it's not like AFI had a
10 public stock. It's a phantom stock. It's,
11 you know, it's nothing you can really point
12 to.

13 Q. You were deposed in November 2012;
14 correct?

15 A. Yes.

16 Q. And at that deposition you gave
17 truthful answers?

18 A. Yes.

19 MS. FISSELL: I'd like to mark this Plaintiff's
20 as Marano 1, the transcript of the Objection
21 deposition of Thomas Marano, dated 12:19-22:
22 November 12, 2012. Inadmissible
hearsay (FRE 802)

23 BY MS. FISSELL:

24 Q. And if I could just turn your
25 attention to page 19. And if you look at

1 T. Marano

2 line 16, are you saying that your compensation
3 bears -- the question posed to you was, "Are
4 you saying that your compensation bears no
5 relationship to AFI's financial performance?

6 "Answer: Broadly, if AFI does well,
7 I'll do well, but AFI has a very large number
8 of components that affect their
9 profitability."

10 Is that answer true?

11 A. That answer is true.

12 MR. DONOVAN: I'll object to the
13 form.

14 BY MS. FISSELL:

15 Q. Were there other ResCap employees
16 that were also employed at either AFI or Ally
17 and had a dual role similar to the way you
18 did?

19 A. Yes.

20 Q. Who were those employees?

21 A. I actually can't recall the names at
22 this point in time, but there were several
23 people who had a dual role.

24 Q. By several, you mean more than 10?

25 MR. LIPPS: Objection to form.

Plaintiff's
Objection
13:15-23:
Irrelevant
(FRE 401,
402), lack of
personal
knowledge
(FRE 602)

1 T. Marano

2 Go ahead.

3 A. It might be less than 10.

4 Q. Was James Aretakis one of those
5 employees?

6 A. I'm sorry, I don't recall who James
7 Aretakis is.

8 Q. What about Albert Celini?

9 A. Al Celini, I think, worked for Ally
10 Bank. I don't know if he worked for ResCap.

11 Q. Joseph Cortez?

12 A. I'm not familiar.

13 Q. Cathy Dondzila?

14 A. Cathy Dondzila, I believe, worked --
15 well, she did the accounting work for us at
16 ResCap. I don't recall if she was a dual
17 employee or not.

18 Q. What about Tammy Hamzehpour?

19 A. For a period of time Tammy worked

20 for Ally, and then I think for another period

21 of time she -- I know for another period of

22 time she worked for ResCap.

23 I don't know if she had -- no, Tammy

24 probably had dual responsibilities.

25 Q. What about William Marx?

Plaintiff's
Objection
14:18-24
Lack of
personal
knowledge
(FRE 602)

1 T. Marano

2 A. Who?

3 Q. William Marx?

4 A. I don't recall who William Marx is.

5 Q. Barbara Westman?

6 A. I know who Barbara is, I don't know
7 if she had a dual role.

8 Q. James Young?

9 A. I'm not -- again, Jim moved around
10 from ResCap to Ally Bank. I don't know if he
11 was ever an Ally employee.

12 Q. Is there anyone who you recall
13 having the dual role?

14 A. I don't recall with 100 percent
15 certainty. There was a couple other people
16 that you could look into, but...

17 Q. Who are those people?

18 A. I think maybe Lou Neese may have had
19 a dual role. And who else.

20 Lou is the only one that comes to
21 mind.

22 Q. How was it determined which entity
23 an employee would work for?

24 MR. LIPPS: Objection. Calls for
25 speculation, but go ahead, if you know.

1 T. Marano

2 A. It would depend upon the nature of
3 their qualifications and when they were hired.
4 For instance, some people could bring value to
5 both parts of the firm or multiple parts of
6 the firm and other people's skill set was more
7 narrowly focused.

8 Like I said, in the context of a
9 dual employee, I don't think there were a lot,
10 meaning someone who did two jobs at the same
11 time.

12 There were plenty of employees that
13 moved between the organization, but very few
14 did two jobs at the same time.

15 Q. And for employees that did have dual
16 roles, are you aware of how the costs for that
17 employee were allocated?

18 A. There was, for those types of
19 employees, there was a cost allocation model.
20 I couldn't take you -- I don't recall the
21 specifics of it, but there was a model or, you
22 know, a process.

23 Q. So, for instance, for your salary,
24 the cost of your salary was split between
25 ResCap and Ally?

Plaintiff's
Objection
16:15-17:8
Lack of
personal
knowledge
(FRE 602)

1 T. Marano

2 A. In the context of my case, I
3 actually don't know how they did it. I really
4 don't know how they did it. I know we made a
5 lot of money at the parent and we also, you
6 know, had some years where we made a lot of
7 money at ResCap, but I don't know how it was
8 done.

9 Q. Was there any system in place for
10 monitoring which employees were working for
11 which entity?

12 A. I didn't do that work, so I
13 couldn't -- I couldn't tell you how it was
14 done. I'm sure there was a process, as I
15 said. You know, that would be more in the
16 H.R. or the accounting area.

17 Q. Are you familiar with what's been
18 termed the Phase II disputes between the
19 debtors and the ad hoc group?

20 MR. LIPPS: Objection to form, but
21 go ahead.

22 A. You'd have to get a little more
23 granular on that for me. I'm sorry. The
24 way -- I sort of know what it is, but you have
25 to -- if you give me specifics, I could help.

1 T. Marano

2 Q. Okay.

3 So are you aware that there's a
4 dispute over the claims relating to
5 intercompany balances between debtor entities?

6 A. Yes.

7 Q. And are you aware that there's a
8 dispute over certain claims that the debtors
9 have against Ally?

10 MR. LIPPS: Objection to form, but
11 go ahead.

12 MR. DONOVAN: Objection to form.

13 A. Can you just rephrase it?

14 Q. Sure.

15 So, you're aware that there is as
16 part of the plan certain claims that the
17 debtors have against Ally are being settled?

18 A. That's correct, yes.

19 Q. And are you aware that the JSNs
20 claim that they have a lien over some of those
21 claims?

22 A. Yes, I am.

23 Q. Okay.

24 Do you know which of those claims
25 the JSNs are asserting they have a lien over?

1 T. Marano

2 MR. LIPPS: Objection to form.

3 A. I really don't know the specifics of
4 their claim.

5 Q. Okay.

6 Are you aware that the JSNs are
7 asserting they have a lien relating for -- a
8 breach of contract claim relating to --
9 relating to the first 2009 tax allocation
10 agreement?

11 A. I know that scenario where they --
12 where they have a dispute, yes.

13 Q. And also relating to the brokering
14 and consumer loans project?

15 A. I'm aware they have an issue with
16 that, as well, yes.

17 Q. And the failure to make swap
18 payments based on the value of the entire MSR
19 portfolio?

20 A. I know they have an issue with the
21 swap arrangement, but I don't understand it
22 the way you've described it.

23 Q. Okay.

24 And what about the 2006 bank
25 restructuring?

1 T. Marano

2 A. I know they have an issue with that,
3 as well.

4 Q. And will you be spending any written
5 direct testimony -- sorry, let me back up.

6 You're going to be submitting
7 written direct testimony to the court
8 tomorrow; correct?

9 A. Yes.

10 Q. And have you reviewed that
11 testimony?

12 A. That's something we have worked
13 on --

14 MR. LIPPS: I don't want you to talk
15 about conversations that you've had.

16 THE WITNESS: Lawyers.

17 MR. LIPPS: It hasn't been
18 submitted, so it's not ready for his
19 review.

20 MS. FISSELL: Okay. So you're --
21 okay.

22 BY MS. FISSELL:

23 Q. Do you know the substance of what
24 you'll be testifying about?

25 A. Yes.

1 T. Marano

2 Q. Okay.

3 Unless your attorney directs you not
4 to answer a question, you have to answer the
5 question that I ask.

6 MR. LIPPS: He's been answering your
7 questions.

8 MS. FISSELL: Okay.

9 MR. LIPPS: Just ask the question.

10 MS. FISSELL: I'll ask it when I'm
11 ready to ask it.

12 So I don't think it's
13 privileged whether -- were you directing
14 him not to answer whether he has reviewed
15 the testimony? I think those are two
16 questions ago.

17 MR. LIPPS: Yes.

18 MS. FISSELL: So you're saying he
19 can -- you're directing him not to answer
20 whether he's actually reviewed the direct
21 testimony.

22 MR. LIPPS: I'm not going to allow
23 him to testify about conversations we had
24 with respect to the preparation of the
25 written direct testimony. It's not due to

1 T. Marano

2 be submitted until tomorrow, so I'm not
3 sure what you're trying to accomplish with
4 the question.

5 But why don't you ask it and I'll
6 either direct him not to answer or I'll
7 allow him to answer.

8 MS. FISSELL: Okay. Well, we'll see
9 how far we get. We might just have to
10 adjourn his testimony until after his
11 direct testimony is admitted if you're not
12 going to allow him to speak about the
13 substance of it.

14 MR. LIPPS: No, he can speak about
15 the substance of his direct testimony.

16 MS. FISSELL: Okay.

17 MR. LIPPS: He just said he knows
18 generally what he's going to testify
19 about.

20 MS. FISSELL: Okay.

21 BY MS. FISSELL:

22 Q. So are you -- is the subject of your
23 direct testimony going to cover any of the
24 areas that we just went over that the JSNs or
25 the ad hoc group and the debtors are

1 T. Marano

2 disputing?

3 MR. LIPPS: And I'll allow him to
4 answer it. I just want to understand.

5 You're talking about the intercompany
6 balances and then the four claims that you
7 walked through?

8 MS. FISSELL: Yes.

9 THE WITNESS: Can we take a second?

10 MR. LIPPS: Sure.

11 MS. FISSELL: Well, you can't take a
12 second while a question is pending.

13 MR. LIPPS: If he wants to consult
14 with me on whether he's disclosing
15 privilege or not, I think he can do that.

16 MS. FISSELL: I mean, you're not
17 supposed to have a conference while a
18 question is pending.

19 Are you directing him not to answer
20 the question?

21 MR. LIPPS: No. I want to help my
22 client make sure he doesn't close
23 privileged information.

24 MS. FISSELL: Okay.

25 It's completely inappropriate to

1 T. Marano

2 talk to counsel while a question remains
3 pending.

4 A. Okay. Rephrase your question or ask
5 me again.

6 Q. Is the substance of your testimony
7 going to cover any of the topics that we just
8 went over, the intercompany balances, the four
9 claims that the debtors have against Ally?

10 A. I can't answer that question.

11 MR. LIPPS: Without talking to me?

12 THE WITNESS: Yes, without speaking
13 to him.

14 MR. LIPPS: Will you give me the
15 courtesy of speaking to him?

16 MS. FISSELL: Why don't we do this.

17 We'll go back to that if we have to.

18 BY MS. FISSELL:

19 Q. Why don't you tell me what the
20 substance of your direct testimony is going to
21 be about.

22 A. The majority --

23 THE WITNESS: Can I do that?

24 MR. LIPPS: You can talk about
25 generally what you understand. Obviously,

1 T. Marano

2 you haven't --

3 THE WITNESS: Yes. We haven't
4 finished it.

5 MR. LIPPS: -- it's not submitted,
6 so...

7 A. We haven't finished it.

8 Q. Okay.

9 A. Generally, the deposition is about
10 the --

11 MR. LIPPS: The direct testimony.

12 A. Pardon me, the direct testimony is
13 about the value that we achieved through the
14 process of our actions that led ResCap to a
15 soft landing in bankruptcy.

16 And there obviously is -- there are
17 some actions we took that I describe in there
18 that may touch on the areas of the dispute
19 you've raised; but in the specific way you've
20 raised them, I can't say that they are a
21 hundred percent addressed at this time.

22 Q. Okay.

23 So how does your direct testimony
24 touch upon the areas of dispute?

25 MR. LIPPS: Objection to form. I

1 T. Marano

2 don't see how he can answer that. He
3 hasn't given his direct testimony yet, but
4 go ahead.

5 MS. FISSELL: I mean, the whole
6 purpose of this deposition is to prevent
7 having us do trial by ambush. And so we
8 are entitled to question what he is going
9 to be testifying about.

10 If you're not going to let me do
11 that, then we can just adjourn this
12 deposition until Wednesday and cover
13 what's actually in his direct testimony
14 submitted to the court.

15 MR. MATZA-BROWN: That's not the
16 schedule you've agreed to.

17 MR. LIPPS: You knew the direct
18 testimony --

19 MS. FISSELL: Well, this is the
20 subject of his -- of the deposition is
21 what he's going to be testifying about and
22 we're going to explore.

23 If you want me to go through
24 every -- every issue and every document
25 that he has ever touched, we can spend it

1 T. Marano

2 but we're going to be here until
3 9:00 tonight.

4 MR. LIPPS: You never --

5 MS. FISSELL: If you want to --

6 MR. MATZA-BROWN: -- a long time
7 ago.

8 MS. FISSELL: If you want to go --
9 I'm entitled to explore with him what he's
10 going to be testifying about. And if
11 you're not going to let me do that, we
12 will adjourn the deposition.

13 MR. LIPPS: No, he has answered to
14 the best he can. The problem is you're
15 framing your questions in terms of direct
16 testimony that will not be submitted until
17 tomorrow.

18 You knew that was the date it was
19 going to be submitted. He's here for the
20 period of time that we have agreed upon.
21 You can ask him --

22 MS. FISSELL: There's no period of
23 time we have agreed upon. I have seven
24 hours.

25 MR. LIPPS: Seven hours. Seven

1 T. Marano

2 hours is what you have.

3 MS. FISSELL: Okay.

4 MR. LIPPS: So if you want to show
5 him document after document for seven
6 hours, you can; but if you have specific
7 questions, ask him a specific question and
8 he'll be able to answer it.

9 But to frame it around direct
10 testimony that's not even due until
11 tomorrow, I mean, that's what
12 cross-examination --

13 MS. FISSELL: It's due tomorrow. He
14 should know what he's testifying about
15 tomorrow. You know, and --

16 MR. MATZA-BROWN: Just ask the
17 question. In that way -- I mean, that was
18 the objection. You're talking about
19 something that doesn't actually really
20 exist yet. I think that we can do this.

21 BY MS. FISSELL:

22 Q. What are you planning to testify
23 about in your direct testimony? You said
24 you're going to be touching upon areas that
25 relate to the disputes between the ad hoc

1 T. Marano

2 group and the debtors.

3 MR. LIPPS: Objection.

4 BY MS. FISSELL:

5 Q. What are those areas?

6 MR. LIPPS: Objection.

7 Mischaracterizes. But go ahead.

8 A. The deposition largely talks --

9 MR. LIPPS: Direct testimony.

10 A. Pardon me. The direct testimony
11 largely talks about the actions that the
12 ResCap board of directors and management team
13 took as we approached bankruptcy to provide
14 for a soft landing.

15 It talks a bit about the settlement
16 process with Ally, the first, you know, the
17 first round settlement. It talks a little
18 bit -- it addresses a little bit the issues
19 surrounding the value that was achieved
20 through having delivered a soft landing.

21 Q. Anything else?

22 A. At the moment, that's all that I can
23 really say I, you know, am on the topic.

24 Q. Is there anything else that you
25 think you should -- you would like to testify

1 T. Marano

2 about?

3 MR. LIPPS: Objection to form.

4 A. I prefer to testify about nothing.

5 Unfortunately, I'm here.

6 Q. All right.

7 So you said, you've mentioned soft
8 landing a few times.

9 What are you referring to by the
10 soft landing?

11 A. There was a risk that ResCap could
12 have gone into a free-fall bankruptcy.

13 Q. Uh-huh.

14 A. And we tried to evaluate the impact
15 of a soft landing bankruptcy versus a
16 free-fall bankruptcy on the value of the
17 assets as we're approaching possible
18 consideration of a filing.

19 So we did a number of things to
20 ensure that we provided as soft a landing as
21 possible, meaning a very large DIP,
22 cooperation with government agencies,
23 cooperation with regulators, retention
24 bonuses, that sort of thing, and consistency
25 of management team.

1 T. Marano

2 So we focused heavily on that
3 because we felt that that would ensure that
4 when the assets were liquidated, we would
5 achieve the highest value possible for those
6 assets.

7 Q. What were the actions that the board
8 took to achieve that?

9 A. The board encouraged us, myself in
10 particular, to meet with each of the GSEs and
11 the FHFA, HUD. The board encouraged the firm
12 to get settlement with DOJ and the Attorney
13 Generals.

14 A subcommittee of the board worked
15 on developing a settlement with Ally. The
16 board had a compensation committee and the
17 compensation committee approved the necessary
18 bonuses that we brought forth to the judge for
19 retention. Those sorts of things.

20 Q. Anything else?

21 A. That's all I can recall.

22 Q. You said that you achieved the soft
23 landing by having a large debt, cooperating
24 with the government, retention bonuses, and
25 ensuring consistency of management?

1 T. Marano

2 A. As well as coordinating with the
3 GSEs, Fannie, Freddie, and ultimately Ginnie
4 Mae, yes.

5 Q. Anything else?

6 A. We actually increased certain
7 staffing levels and brought vendors in to
8 provide support to make sure that the
9 delinquencies on the pool did not spike in the
10 confusion surrounding the filing of ResCap.

11 Confusion on the part of borrowers,
12 in other words, as to whether or not they
13 needed to make their payments.

14 Q. And -- okay.

15 One of the other areas that you said
16 you will be testifying about is the settlement
17 process with Ally?

18 A. Yes.

19 Q. So what do you plan to testify about
20 with respect to the settlement process with
21 Ally?

22 A. Again, it's not finished yet, but I
23 will mention the fact that we, you know, got a
24 \$750,000,000 settlement from Ally. That was
25 worked on by John Mack and John Ilany.

1 T. Marano

2 Q. Were you involved in achieving the
3 \$750 million settlement?

4 A. No, that was not negotiated by me.

5 Q. Did you provide any input to
6 Mr. Mack or Mr. Ilany?

7 A. No.

8 Q. Other than the fact that Mr. Mack
9 and Mr. Ilany achieved a \$750 million
10 settlement with Ally, is there anything else
11 you plan to discuss with respect to that?

12 A. No.

13 Q. And you're aware that that
14 settlement ultimately was not agreed to?

15 A. Correct.

16 It was ultimately replaced with a
17 second settlement.

18 Q. So you didn't have any negotiations
19 with Ally with respect to the \$750 million
20 settlement?

21 MR. LIPPS: Objection. Asked and
22 answered.

23 A. Again, the folks who negotiated that
24 settlement were Ilany, Mack, Carpenter. I'm
25 not sure who else from Carpenter, from Ally's

1 T. Marano

2 side.

3 Q. You said in addition to testifying
4 about the actions that the board took and
5 providing a soft landing, the settlement
6 process with Ally -- well, you said the
7 settlement process, but what you're saying to
8 me now you didn't mean the settlement process,
9 you just mean the fact that there was a
10 one-time \$750 million agreed-to settlement
11 between AFI and the debtors?

12 MR. LIPPS: Objection to form.

13 Argumentative. Also asked and answered.

14 Go ahead.

15 A. My testimony does not describe the
16 settlement process in, you know, any level of
17 detail. Because it's written and we refer to
18 it, I think it's, you know, it's the process.

19 Q. What do you mean by "the process,"
20 it, the process?

21 A. The board had meetings. Information
22 was shared with the board from Mr. Ilany and
23 Mr. Mack and, you know, they did the
24 day-to-day negotiation with Ally, and we
25 ultimately came to -- or they ultimately came

1 T. Marano

2 to a \$750 million number, and the board
3 ultimately approved that. That's the kind of
4 process.

5 Q. What was -- you said information was
6 shared with the board from Mr. Ilany and
7 Mr. Mack.

8 What was that information?

9 A. They would -- they would on occasion
10 come back after a meeting with the folks from
11 Ally and say, we're making progress, we're not
12 making progress, these are -- you know, there
13 are some sticking points.

14 You know, they had a view as to
15 whether or not they could get more or less
16 money from time to time out of Ally. So they
17 shared their thoughts with us. But,
18 ultimately, they worked out the best deal that
19 they could get at that point in time.

20 Q. Do you recall anything else about
21 those discussions with them?

22 A. Not really, no.

23 Q. I believe you said there was a third
24 issue that you'd be covering in your planned
25 direct testimony. And you said about, I

1 T. Marano

2 believe it was issues achieved post petition?

3 I'm not sure if I'm recalling correctly what

4 you said.

5 A. Again, I don't recall, you know,
6 where you're going with that, but I know that
7 we did do things post petition. There were
8 specific requirements we needed to meet by --
9 in the DOJ, AG and Fed settlement, and we
10 brought sufficient resources forward to get
11 those milestones met so we could get the
12 cooperation of the Attorney Generals to allow
13 us to continue to operate in their states
14 while we were in bankruptcy.

15 You know, those would include the
16 loan modifications, working to complete HARP
17 loan modifications, collecting the Ginnie Mae
18 insurance or collecting the HUD insurance on
19 the Ginnie Mae loans.

20 So we really, post bankruptcy,
21 shifted a lot of our effort to getting
22 those -- those requirements by the government
23 and the regulators and the GSEs to work
24 smoothly to maximize the value of the assets.

25 Q. Okay.

1 T. Marano

2 Other than the actions that the
3 board took to provide a soft landing and the,
4 what you've termed the settlement process with
5 Ally relating to the \$750 million settlement,
6 what else do you plan to testify about?

7 MR. LIPPS: Objection to form.

8 A. At this point in time, I've given
9 you the, you know, from what I have completed
10 so far, a majority of what I plan to talk
11 about.

12 Q. Well, I do not want the majority. I
13 want all of it. So --

14 MR. LIPPS: Well, you'll get it on
15 the 12th.

16 A. I can't give you --

17 MS. FISSELL: We'll go back.

18 MR. LIPPS: Are you going to waive
19 your right to cross-examine at trial? I
20 mean, you get the right to cross-examine?

21 You'll get his testimony when --

22 MS. FISSELL: I mean --

23 MR. LIPPS: -- it's scheduled to be
24 provided.

25 MS. FISSELL: Right. So you want to

1 T. Marano

2 do trial by ambush. That's fine.

3 MR. LIPPS: Direct testimony with
4 cross is not trial by ambush. I've been
5 doing it for 32 years. That's the way we
6 operate in the courtroom.

7 The witness swears under oath,
8 stands up, does direct testimony, and then
9 the lawyer on the other side
10 cross-examines. Your deposition is where
11 you can ask questions about specific
12 topics, not trying to somehow preview what
13 he's going to testify about at trial.

14 BY MS. FISSELL:

15 Q. You said you going to talk about a
16 little bit about the issues surrounding the
17 value that was achieved through having
18 determined a soft landing.

19 What was the value that was achieved
20 through having delivered a soft landing?

21 A. I can name a few things. For
22 instance, we had a large portfolio of Ginnie
23 Mae buyout loans. These were loans that did
24 have government insurance; however, there were
25 significant document deficiencies in the loan

1 T. Marano
2 files. The documents existed, but they,
3 because of the acquisitions over the year,
4 years, most of the documents were in a place
5 called Iron Mountain, some of the documents
6 were not in the actual loan files, some of the
7 documents were of a nature that we could not
8 find -- pardon me -- some of the document
9 deficiencies were of a nature that we could
10 not find any counterparty to finance them.

11 And, in fact, the only counterparty
12 we found that would finance them was Ally.
13 Ally provided a line for these Ginnie Mae
14 documents. I'll be describing that. That
15 allowed us to continue to buy Ginnie Mae loans
16 or loans out of Ginnie Mae pools, modify those
17 borrowers, take those loans that would have
18 traded at 70 cents or 60 cents on the dollar,
19 cure them, get the borrower back on track and
20 redeliver them at 100 cents on the dollar.

Also, by having the line from Ally,
we were afforded time to maintain our Ginnie
Mae delivery status. We actually got an
extension. We negotiated an extension after
we were in bankruptcy. That allowed us to

1 T. Marano

2 collect the insurance for a longer period of
3 time, and, again, deliver loans to Ginnie Mae
4 for a longer period of time, all of which
5 caused us to get value for loans that, you
6 know, might have sold for 50 to 70 cents on
7 the dollar, got us up to a point where we
8 could get close to par on those loans.

9 The extra runway we got from Ally
10 and from Barclays through their DIP has put us
11 in a position where we today continue to make
12 progress on curing the document deficiencies.

13 Q. Other than what we discussed, is
14 there anything else that you will be
15 testifying about?

16 MR. LIPPS: Objection. Asked and
17 answered.

18 Go ahead.

19 A. There will be some -- there will be
20 some testimony about the role and challenges
21 of working with the regulators in that. I
22 think I mention that already, though.

23 Q. That's okay. You can repeat.

24 You said some of what you might be
25 testifying about might touch upon areas

1 T. Marano

2 related to what we discussed earlier as
3 Phase II issues?

4 A. Yes.

5 Q. So how does what we've just gone
6 through touch upon the Phase II issues?

7 A. I think -- again, my recollection on
8 some of the Phase II issues are whether or not
9 the efforts we've put forth have created value
10 that belongs to the JSNs or someone else.

11 And I believe -- I would assume --
12 actually, could you go back over the
13 Phase II --

14 Q. Sure. Sure.

15 A. -- issues again. That will be
16 easier for me.

17 Q. All right.

18 We'll do it more specifically.

19 So will anything you will be
20 testifying about touch upon the intercompany
21 balances between debtor entities?

22 MR. LIPPS: Objection to form.

23 A. I don't think I'm going to be -- I
24 don't think there's going to be any, you know,
25 extreme detail there. I know we had

1 T. Marano

2 intercompany balances, but not -- we had
3 intercompany balances, I know that, but I'm
4 not going to be dwelling on that in the
5 testimony, no.

6 Q. I understand you might not dwell on
7 it, but are you touching upon it in any way,
8 the intercompany balances?

9 MR. LIPPS: Just note my objection
10 to form.

11 Go ahead.

12 A. Just we're not finished yet, so, I
13 can't tell you, you know, I don't know.

14 Q. At this point are you aware of
15 touching upon it in any way?

16 A. Again, I think that I acknowledge it
17 from, you know, what I've seen so far, but
18 it's not particularly detailed.

19 Q. So what do you --

20 MR. LIPPS: Just note my objection
21 to form.

22 BY MS. FISSELL:

23 Q. What do you acknowledge?

24 A. Intercompany balances existed.

25 Q. Okay.

1 T. Marano

2 And they no longer exist?

3 A. I'm not -- that's not in my
4 deposition.

5 Q. Well, you used the past tense.
6 That's why I asked.

7 A. Intercompany balances existed
8 from -- there may be intercompany balances
9 today. I'm not an accountant. I haven't
10 looked at the books.

11 Q. Will you be testifying at all about
12 the first or second 2009 tax allocation
13 agreements?

14 A. No, I don't think so.

15 Q. What about the 2006 bank
16 restructuring?

17 A. I don't think so. I wasn't
18 involved.

19 Q. The brokering consumer loans
20 project?

21 MR. LIPPS: Objection to form.

22 A. I just, you know, I don't know, but
23 I don't think so.

24 Q. The failure to make certain swap
25 payments based on the value of the entire MSR

1 T. Marano

2 portfolio?

3 MR. LIPPS: Objection to form.

4 A. Again, I believe I do touch on swap,
5 but not in the way you've described it.

6 Q. What do you touch upon with respect
7 to the swap?

8 A. There was swap. That was all part
9 of the relationship between Ally and ResCap.

10 Q. And what about just the fact that a
11 swap existed between Ally and ResCap?

12 A. Yes.

13 Q. Anything else?

14 A. No.

15 Q. Will your testimony discuss debt
16 forgiveness related to the intercompany
17 balances between debtors?

18 MR. LIPPS: Objection to form. Also
19 asked and answered.

20 A. I don't recall that I had anything
21 in there about that.

22 Q. Do you recall that there was debt
23 forgiveness related to intercompany balances?

24 A. There was forgiveness of their
25 company balances, yes.

1 T. Marano

2 Q. Will you be testifying about
3 subordination under Rule 510(b) of the
4 Bankruptcy Code?

5 MR. LIPPS: Objection to form.

6 A. No, I don't think so.

7 Q. Will you be testifying about the
8 appropriate allocation of the Ally
9 contribution?

10 MR. LIPPS: Objection to form.

11 A. I believe I describe the Ally
12 contribution, but how it's allocated, we never
13 really thought about the allocation, you know,
14 how that would be allocated. Ally's view, the
15 only way we could get a settlement is if we
16 got everybody on board.

17 Q. How do you describe the Ally
18 contribution?

19 MR. LIPPS: Objection to form.

20 A. Ally contributed \$750 million for
21 the settlement. Ally provided a DIP of a few
22 hundred million dollars. Ally provided shared
23 services which allowed us to function in a
24 compliant manner. That's, you know, generally
25 how I would describe it or how I do describe

1 T. Marano

2 it.

3 Q. So when I say Ally contribution, you
4 answered referring to the \$750 million
5 settlement.

6 MR. LIPPS: Objection to form. It's
7 argumentative.

8 A. Ally, the way I look at it is Ally
9 provided a lot of stuff. They provided
10 billions of dollars over, you know, many, many
11 years. They provided a \$750 million
12 settlement, which they ultimately raised to
13 north of 2 billion.

14 They provided infrastructure
15 support, system support, technology support
16 and they provided a DIP, as well as some other
17 funding, assets, other funding functions
18 within the DIP.

19 Q. Will you be discussing the \$2.1
20 billion Ally contribution or --

21 A. I don't -- I don't believe I have
22 that number in my testimony.

23 MR. LIPPS: Just note my objection
24 to form.

1 T. Marano

2 BY MS. FISSELL:

3 Q. Will you be testifying about whether
4 the JSNs are entitled to out-of-court
5 protection?

6 MR. LIPPS: Objection to form.

7 A. I'm not a lawyer. I'm not going to
8 decide a legal matter or opine on it. I'm
9 just trying to share the information I have.
10 That's it.

11 Q. Okay.

12 So were you involved in the
13 settlement discussions prepetition with the
14 debtors, Ally and the JSNs?

15 MR. LIPPS: Objection. Asked and
16 answered.

17 Go ahead.

18 A. I was at a meeting but did not sit
19 in at the meeting where that was discussed
20 before we filed, yes. I was brought -- I
21 forgot what law firm hosted it. I was there,
22 but I was not involved in most of that
23 discussion.

24 Q. Are you aware that the JSNs, AFI and
25 ResCap agreed to a confidentiality agreement

1 T. Marano

2 as part of the post settlement discussions?

3 A. I don't recall if they did or not.

4 I just don't recall.

5 MS. FISSELL: We're going to mark as Plaintiff's
6 Marano 2 an agreement between Residential Objection
7 Capital, LLC, Ally Financial, Inc. and 48:5-8
8 Davidson Kempner Capital Management LLC. Inadmissible
hearsay (FRE
802), lack of
personal
knowledge
(FRE 602),
lack of
foundation
(FRE 602,
901, 903)

9 (A Discussion was Held off the
10 Record.)

11 (Marano's Exhibit 1, Transcript of
12 the deposition of Thomas Marano dated
13 November 12, 2012, was marked for
14 identification.)

15 (Marano's Exhibit 2, Agreement
16 between Residential Capital, LLC, Ally
17 Financial, Inc. and Davidson Kempner
18 Capital Management, LLC, was marked for
19 identification.)

20 BY MS. FISSELL:

21 Q. So does this refresh your
22 recollection that there was a confidentiality
23 agreement between certain JSNs, ResCap and
24 Ally or AFI?

25 A. It really doesn't. It's clearly,

1 T. Marano

2 it's executed by the general counsel of
3 ResCap, but I just don't recall the document.

4 Q. Are you aware that the agreement
5 required disclosure of any material nonpublic
6 information by the petition date?

7 MR. DONOVAN: Objection to form.

8 MR. LIPPS: Are you asking as to
9 this document, Marano Exhibit 2?

10 MS. FISSELL: Uh-huh.

11 MR. LIPPS: Well, just note my
12 objection. He said he doesn't remember
13 the document. So the document will speak
14 for itself.

15 But go ahead and answer if you can.

16 A. I -- if you can show me where it
17 says that, I can --

18 Q. Sure.

19 If you'll turn to page 4.

Plaintiff's Objection
49:19-51:14

20 A. Okay.

Lack of personal
knowledge (FRE 602), lack
of foundation (FRE 602,
901, 903), inadmissible lay
opinion

21 Q. The second full paragraph.

22 A. Yes. The --

23 MR. LIPPS: Wait a minute. I think
24 she needs to ask a question first.

25 THE WITNESS: Sorry.

1 T. Marano

2 MR. LIPPS: She pointed you to it.

3 What's the question?

4 BY MS. FISSELL:

5 Q. Do you read this as requiring Ally
6 or the debtors to disclose any material
7 nonpublic information by May 18, 2012?

8 MR. DONOVAN: Objection to form.

9 MR. LIPPS: Objection to form. Also
10 calls for -- potentially calls for a legal
11 conclusion.

12 Go ahead.

13 MS. FISSELL: I'll strike that
14 question.

15 BY MS. FISSELL:

16 Q. What do you understand this
17 paragraph to be about?

18 A. I -- so I understand that I've seen
19 this before. This is sort of like a sunlight
20 provision. When you're -- again, I'm assuming
21 this is Ally's document.

22 But essentially what they're saying
23 to an investor is, we're giving you material
24 nonpublic information. You should not be
25 trading on this information or sharing this

1 T. Marano

2 information to others who may trade.

3 And here it says no later than

4 May 18th, Ally will either disclose the

5 information, and if they don't, then the

6 people who are on the other side of this

7 document can disclose the information and then

8 can trade.

9 Q. You understand that it's important

10 for funds that manage money in a fiduciary

11 capacity to be able to trade in and out of

12 their positions?

13 MR. LIPPS: Objection to form.

14 A. At times, yes.

15 Q. Okay.

16 You're aware that the parties later

17 engaged in a second mediation?

18 A. By "parties," can you give us --

19 Q. Oaky. It's not clear. I appreciate

20 you asking for a clarification.

21 So that the debtors and Ally and the

22 creditors committee engaged in a second

23 mediation.

24 A. Yes.

25 Q. And do you agree that the JSNs

Plaintiff's
Objection
51:9-14:
objection to
form; vague and
ambiguous

1 T. Marano

2 wanted to participate in that mediation?

3 MR. DONOVAN: Objection to form.

4 MR. LIPPS: Objection to form and
5 assumptions.

6 A. I don't know what the JSNs wanted to
7 do. I know that the JSNs, if we're talking
8 about the same mediation, they were present.

9 Q. What mediation are we talking about
10 or do you think that I'm talking about?

11 MR. LIPPS: Objection to form.

12 A. The one that was held at 1177 Sixth
13 Avenue. I think the JSNs were there. Maybe
14 they weren't. I don't know.

15 Q. Is that the mediation that resulted
16 in the global settlement --

17 A. Yes.

18 Q. -- embodied in the plan?

19 A. Yes.

20 Q. Do you know whether the debtors
21 offered to enter into an agreement similar to
22 what was marked as Marano Exhibit 2 with the
23 JSNs in the second mediation?

24 A. I don't recall. I recall there were
25 some parties who, no matter what, would not

1 T. Marano

2 sign a document like this. But I don't recall
3 if this was offered up as part of the second,
4 I just can't remember.

5 Q. Who were the parties who would not
6 sign this no matter what?

7 A. There was -- I think Aurelius was
8 one fund that never wanted to sign these
9 documents. That's kind of what I recall.

10 Q. Do you know whether AFI was willing
11 to sign this document?

12 MR. DONOVAN: Objection to form.
13 Foundation.

14 A. I really don't.

15 MR. LIPPS: Do you want to take a
16 break?

17 THE WITNESS: We're at 3:00.

18 MS. FISSELL: Do you want to take a
19 break?

20 THE WITNESS: Yes. Now, or at 3:00.

21 MS. FISSELL: Can we just finish up
22 this, then we can take a break.

23 THE WITNESS: Sure.

24 (A Discussion was Held off the
25 Record.)

1 T. Marano

2 MS. FISSELL: So I'd like to mark as
3 Marano Exhibit 3 a document that's been
4 stamped AHG20002731.

5 (Marano's Exhibit 3, Document,
6 Bates No. AHG20002731, was marked for
7 identification.)

8 BY MS. FISSELL:

9 Q. Do you know who Dan Gropper is?

10 A. Based upon the bottom of the e-mail,
11 he's from Aurelius.

12 (A Discussion was Held off the
13 Record.)

14 Q. He's our client, so I'd better be
15 able to say it.

16 A. Yes.

17 I do not know him, though.

18 Q. I'll focus your attention on the
19 second or the second e-mail from the bottom
20 that says -- do you know who Ken Eckstein is?

21 A. Yes, I do.

22 Q. Who is --

23 A. He's the lawyer for the Creditors'
24 Committee.

25 Q. And he says, "Did you hear my

1 T. Marano

2 comment." He's writing to Dan Gropper. "Did
3 you hear my comment? Judge was receptive to
4 say the settlement discussions are not MNPI."

5 Do you understand what MNPI refers
6 to?

7 A. No.

8 Q. What if I said it's Material
9 Nonpublic Information?

10 A. That I mean --

11 Q. Would that make sense?

12 A. That makes sense.

13 Q. And you see that Gropper responds,
14 "I did hear. Thank you. We will come up with
15 the language that will address both business
16 information and negotiations. The attached
17 motion order which you are familiar with
18 should provide insight."

19 So this is from -- the attachment is
20 from a proceeding from the bankruptcy court in
21 Texas?

22 A. Okay.

23 MR. LIPPS: Are you asking him to
24 acknowledge that?

25 MS. FISSELL: Yes.

1 T. Marano

2 A. Yes. U.S. Bankruptcy Court Order,
3 Northern District of Texas. That's what it
4 says.

5 Q. And it's an order in aid of
6 settlement discussions?

7 MR. LIPPS: Objection to form.

8 A. Again, yes, that's what it says.

9 Q. Okay.

10 This e-mail is dated December 20,
11 2012; correct?

12 MR. LIPPS: Objection.

13 BY MS. FISSELL:

14 Q. Sorry.

15 If you turn back to the first
16 page --

17 A. Okay.

18 Q. -- from Dan Gropper to Ken Eckstein,
19 December 20, 2012?

20 A. Yes.

21 Q. And at this time was the mediation
22 that led to the global settlement commencing?

23 A. I don't recall the exact date that
24 we got Judge Peck involved as the mediator.

25 We had obviously wanted to try and mediate

1 T. Marano

2 with all the creditors early on.

3 But whenever Judge Peck got involved
4 and when you Lew Kruger got involved, it --
5 you know, the whole process picked up steam.
6 I can't remember the dates, though, if that
7 was December 20th. I just don't recall.

8 Q. Okay.

9 MR. LIPPS: Is this a good point for
10 a break?

11 MS. FISSELL: Let me just do two
12 minutes.

13 I'm going to mark as Marano
14 Exhibit 4 a document that's Bates stamped
15 AHG20002759.

16 (Marano's Exhibit 4, Document,
17 Bates No. AHG20002759, was marked for
18 identification.)

19 BY MS. FISSELL:

20 Q. Let me know when you're ready.

21 A. (Document Review.)

22 Okay.

23 Q. You see that this e-mail is dated
24 January 8, 2013?

25 A. Yes.

Plaintiff's
Objection
57:13-60:15
Inadmissible
hearsay (FRE
802), lack of
personal
knowledge
(FRE 602),
lack of
foundation
(FRE 602, 901,
903),
inadmissible
lay opinion

1 T. Marano

2 Q. And that Dan Gropper is attaching a
3 proposed order in aid of mediation?

4 MR. LIPPS: Are you asking him to
5 look and acknowledge on the document,
6 because he's not on the e-mail chain.

7 MS. FISSELL: I'm asking him to
8 acknowledge this.

9 MR. LIPPS: Well, the document
10 speaks for itself. So I'll just object,
11 but go ahead.

12 BY MS. FISSELL:

13 Q. And you know that Mr. Gropper says
14 that he wants to get this in the hands of the
15 debtors, in the e-mails --

16 A. Yes.

17 Q. -- that you guys had for almost a
18 week.

19 And if you'll turn to Proposed Order
20 in Aid of Settlement, and if you'll look at
21 paragraph 8 on page 2, paragraph 8A, sub
22 little i?

23 MR. LIPPS: Is that the one that
24 ends 2761?

25 MS. FISSELL: Yes.

1 T. Marano

2 A. Okay. Do you want me to read all of
3 8?

4 Q. I want you to focus on paragraph sub
5 little I.

6 A. (Document review.)

7 Okay.

8 Q. So would you characterize this
9 provision here, as -- I believe you
10 characterized the provision we looked at in
11 the other confidentiality agreement as a
12 sunlight provision.

13 Do you agree that this paragraph is
14 a similar sunlight type provision?

15 MR. LIPPS: Objection to form.

16 A. It's a little different because,
17 again, I'm not a lawyer, but the way I read
18 this is, we could selectively disclose
19 information to various parties to the
20 mediation which would obviously put certain
21 parties at a disadvantage.

22 There is an opportunity to disclose
23 at some later point. But if we are
24 selectively disclosing, then some parties
25 would be trading on a lack of information.

1 T. Marano

2 So I sort of understand the concept
3 that at some point there's a sunlight
4 provision, but it looks like the way this is
5 written is one party has an advantage versus
6 the other.

7 Q. But you agree that some part of this
8 does contain a sunlight provision?

9 MR. LIPPS: Objection.

10 Argumentative.

11 Go ahead.

12 A. I think somewhere down near the
13 bottom there is a request to disclose by
14 February 28th. So that would give you the
15 sunlight, yes.

16 Q. I'm going to show you one more
17 document.

18 MS. FISSELL: I'll mark as Marano 5
19 a document Bates stamped AHG20002748.

20 (Marano's Exhibit 5, Document,
21 Bates No. AHG20002748, was marked for
22 identification.)

23 BY MS. FISSELL:

24 Q. I'll ask you to flip to the second
25 page of the document stamped 2749. And that's

1 T. Marano

2 the same e-mail that we looked on Marano
3 Exhibit 4?

4 MR. LIPPS: Objection. The document
5 speaks for itself. He's not even on the
6 chain.

7 But go ahead.

8 A. (Document review.)

9 Okay. What was your question?

10 Q. I just -- you see that that's the
11 same --

12 MR. LIPPS: She wants you to compare
13 two e-mails.

14 BY MS. FISSELL:

15 Q. That's the same e-mail that I showed
16 you as Marano Exhibit 5.

17 A. Yes. Yes, it appears to be.

18 Q. And that on January 11th,
19 Mr. Gropper sent Mr. Eckstein an e-mail
20 saying, "Just following up to our conversation
21 of yesterday. Any thoughts?"

22 MR. LIPPS: Objection. The document
23 speaks for itself.

24 Go ahead.

25 A. I see that it's written there, yes.

1 T. Marano

2 Q. And then he followed up again on
3 January 15th, the e-mail at the top of the
4 chain?

5 MR. LIPPS: Same objection.

6 A. Yes.

7 Q. And have you ever seen these e-mails
8 before today?

9 A. No.

10 Q. Were you ever made aware of these
11 communications between Mr. Gropper and
12 Mr. Eckstein?

Plaintiff's
Objection
62:10-63:12
Irrelevant (FRE
401, 402)

13 MR. LIPPS: You can answer that, but
14 I want to caution you I don't want you
15 disclosing any conversations that you may
16 have had with your counsel.

17 So you can go ahead and answer the
18 question, but I want to make sure you
19 don't inadvertently talk about
20 conversations that you had.

21 A. No, I understand.

22 Mr. Eckstein was not my counsel and
23 I had very limited involvement with him and
24 always I had counsel present. I don't know --
25 I don't know anything about what Mr. Eckstein

1 T. Marano

2 received or didn't receive. I just don't
3 know.

4 Q. Were you aware that Aurelius made
5 requests to the committee to participate in
6 the mediation?

7 A. I knew Aurelius -- and this is only
8 through my counsel.

9 MR. LIPPS: Well, I don't want you
10 disclosing anything that you talked about
11 with counsel.

12 A. I can't -- I can't comment.

13 MS. FISSELL: Well, I mean, the fact
14 that he -- whether he knew about a
15 particular fact is not confidential
16 information.

17 BY MS. FISSELL:

18 Q. I'm not asking you to disclose any
19 conversations you had about that fact with
20 counsel, but whether you are aware of the
21 underlying fact that Mr. Gropper or Aurelius
22 was reaching out to the committee about
23 participating in the mediation. That's a fact
24 that you can testify to.

25 MR. LIPPS: Not if he's had

1 T. Marano

2 conversations with counsel. I'm not going
3 to have him talking about counsel.

4 You can ask the committee if they
5 communicated it to him or whatever.

6 MS. FISSELL: I can ask the
7 committee if they communicated to him. I
8 can ask if he was -- if it was
9 communicated by the committee to him.

10 MR. LIPPS: You can ask him if the
11 committee communicated to him, as well,
12 but you can't ask him what he learned
13 through his counsel. It's just not going
14 to happen.

15 MS. FISSELL: I can --

16 BY MS. FISSELL:

17 Q. Okay.

18 Was there ever a time where you were
19 aware that Aurelius had asked to participate
20 in the mediation?

21 A. Yeah. I can answer that.

22 MR. LIPPS: You can answer that.

23 A. I was aware that Aurelius wanted to
24 be part of the mediation process. I was also
25 aware that there were dialogues to try and get

1 T. Marano

2 a document that anyone else had signed to make
3 them comfortable.

4 Why they never signed it, if they
5 ever, indeed, never signed it, I don't know.

6 Q. Okay.

7 MS. FISSELL: Okay. We can take a
8 break now.

9 THE VIDEOGRAPHER: The time is
10 3:09 p.m. We're going off the record.

11 (Recess taken from 3:09 p.m. to
12 3:26 p.m.)

13 THE VIDEOGRAPHER: The time is
14 3:26 p.m. We're going back on the record.

15 BY MS. FISSELL:

16 Q. You discussed earlier the
17 \$750 million settlement with Ally. And were
18 you aware that there was a planned support
19 agreement drafted related to that settlement?

20 A. Yes.

21 Q. And do you recall how intercompany
22 claims between debtors, not between debtors
23 and Ally, but between debtors were treated in
24 that first PSA?

25 A. I don't -- I don't recall the

1 T. Marano

2 specifics of it, no.

3 MS. FISSELL: I'd like to mark as
4 Marano 6 the term sheet for Joint Chapter
5 11 Plan of Reorganization, which is
6 document No. 6-8.

7 (Marano's Exhibit 6, Joint Chapter
8 11 Plan of Reorganization, was marked for
9 identification.)

10 (A Discussion was Held off the
11 Record.)

12 BY MS. FISSELL:

13 Q. If you'll turn to page 7, the top
14 box on that page says Intercompany Claims.

15 Do you want to read that box.

16 MR. LIPPS: You want him to read it
17 to himself or into the record or --

18 MS. FISSELL: He can read it to
19 himself.

20 MR. LIPPS: Okay.

21 A. (Document Review.)

22 Okay.

23 Q. Does that refresh your recollection
24 as to how intercompany claims were treated
25 under the first PSA?

1 T. Marano

2 A. Again, I recall the issue was
3 discussed and addressed. I'm struggling just
4 with the way this is written. I don't
5 understand the impaired and the semicolons.
6 They're like a paragraph before the word
7 "impaired" or should have been just a colon.

8 I'm just not sure how to read this
9 the way it's written.

10 Q. Okay.

11 A. You know, I'm not used to the
12 legalese of a lawyer. You see what I'm
13 saying; right? Like normally I would have
14 written impaired, colon. Why is there a
15 semicolon there?

16 Q. I'm not here to answer your
17 questions.

18 A. I don't know how to read this.

19 Q. My question -- I think you said,
20 though, you do remember how this was
21 refreshing your recollection as to how
22 intercompany claims were treated?

23 MR. LIPPS: No, he does not say
24 that.

25 A. No. I recall there was an issue

1 T. Marano

2 surrounding intercompany claims. Okay? You
3 know, at -- I am aware of that.

4 Q. What was the issue?

5 A. We tended to forgive intercompany
6 claims on a regular basis. And I believe, you
7 know, that in essence we didn't deem them as
8 having any particular value.

9 Q. And when you say "we," you mean the
10 debtors?

11 A. The debtors, yes.

12 Q. So we can ignore, if you will --
13 bear with me for a minute and just ignore that
14 first sentence, which --

15 A. Okay.

16 Q. -- I agree is a bit confusing.

17 And -- but if you start with the
18 second sentence, which reads, "Unless the
19 Junior Secured claims have been paid in full
20 based upon their secured claims, allowed
21 intercompany claims shall receive in full
22 satisfaction of such allowed intercompany
23 claims an amount equal to its pro rata share
24 of ResCap unsecured claims pool."

25 Do you understand what that's

1 T. Marano

2 saying?

3 MR. LIPPS: Objection.

4 A. This, no. This is like the most
5 poorly written sentence I've seen in quite
6 some time. I can't decipher that. I'm
7 totally serious, that is really poorly
8 written.

9 Q. Do you understand this to be saying
10 that the intercompany claims are being waived
11 and settled at zero?

12 A. I can't say that. This is -- like,
13 I have not read this in ages, and this is like
14 the worst sentence I've ever seen. I honestly
15 don't know what this sentence says.

16 Q. Okay. Fair enough.

17 Do you recall any discussions with
18 Ally about the treatment of intercompany
19 claims in the initial PSA?

20 MR. LIPPS: By the initial PSA,
21 you're talking about discussions prior to
22 this agreement?

23 BY MS. FISSELL:

Plaintiff's
Objection
69:24-71:13
Irrelevant
(FRE 401,
402)

24 Q. I just -- when I'm referring to the
25 initial PSA, I'm referring to the PSA that is

1 T. Marano

2 embodied by the term -- this term sheet that
3 we're looking at here.

4 A. The original plan support agreement.

5 MR. LIPPS: I just want to make sure
6 we're not getting into the mediation.

7 MS. FISSELL: No.

8 MR. LIPPS: This is prior to --

9 MS. FISSELL: The prepetition PSA.

10 MR. LIPPS: Thank you.

11 A. So your question, do I recall a
12 conversation. I don't recall having any
13 conversations with anyone in Ally about this.

14 Q. Do you recall anyone telling you
15 that they discussed intercompany claims with
16 Ally in these negotiations?

17 A. I know --

18 MR. LIPPS: Well, I'll let you
19 answer; but, again, I don't want you to
20 disclose any specific conversations that
21 you had with counsel in connection with
22 the negotiation of PSA.

23 A. Again, I know that I discussed with
24 my chief financial officer the topic of
25 intercompany claims, how we did them, how they

1 T. Marano

2 worked at the time all this was coming
3 together. So I can disclose that because he's
4 not my lawyer.

5 Q. You discussed with the ResCap CFO?

6 A. That's correct.

7 Q. But you did not have any discussions
8 with Ally about intercompany claims?

9 MR. LIPPS: Objection. Asked and
10 answered.

11 Go ahead.

12 A. I don't recall any conversation with
13 Ally on this.

14 Q. And you don't recall Mack or Mr.
15 Mack or Mr. Ilany reporting back to the board
16 that they had discussed intercompany balances
17 with Ally?

18 A. I don't recall. They may have. I
19 don't recall. The only conversations I recall
20 were with my CFO.

21 Q. And what were those conversations?

22 A. What exactly was the nature of the
23 intercompany claims. He explained to me how
24 money moved between the various subsidiaries,
25 how periodically we would forgive an

1 T. Marano

2 intercompany balance.

3 I remember discussing the nature by
4 which we forgave them. You know, he reminded
5 me of documents we signed and approved where
6 we would forgive a balance.

7 Q. And you discussed this with him
8 while -- at the same time that the
9 negotiations for the initial PSA were going
10 on?

11 A. Around -- around the same period of
12 time, yes.

13 Q. And what was the purpose of those
14 discussions with your CFO?

15 A. My CFO and I occasionally talked
16 about documents that were getting created that
17 related to ResCap. We read the documents.
18 That sort of thing.

19 You know, I can't remember why this
20 was of particular note to him, but we -- I do
21 recall having a conversation.

22 Q. And who was your CFO at the time?

23 A. Jim Whitlinger.

24 Q. Did you discuss with him how
25 intercompany balances would be treated in the

1 T. Marano

2 first day filings?

3 A. I don't recall in the context of how
4 they would be treated in the first day
5 filings.

6 Q. Did you play any role in how they
7 would be treated in the first day filings?

8 A. No, I didn't do the first day
9 filings.

10 Q. Other than mentioning the existence
11 of intercompany balances in your planned
12 testimony, is there anything else that you
13 will be discussing with respect to
14 intercompany balances?

15 MR. LIPPS: Objection. That's been
16 asked and answered. I also object to the
17 form.

18 A. I don't recall any detail of
19 intercompany balances as to what I'm going to
20 be saying in my deposition -- direct
21 testimony. Sorry.

22 Q. Well, just use the word "deposition"
23 for your direct testimony. We all know what
24 you're talking about.

25 A. Clearly, I'm not a lawyer.

1 T. Marano

2 MS. FISSELL: I will mark as Marano
3 Exhibit 7, the Notice of Filing of
4 Corrected Solicitation Version of the
5 Disclosure Statement and Joint Chapter 11
6 Plan, which is Docket No. 4819.

7 (Marano's Exhibit 7, Notice of
8 Filing of Corrected Solicitation Version
9 of the Disclosure Statement and Joint
10 Chapter 11 Plan, was marked for
11 identification.)

12 BY MS. FISSELL:

13 Q. If you'll turn to page -- you'll
14 have to unrubber band that -- to page 20.

15 MR. LIPPS: What's the number up
16 top?

17 MS. FISSELL: You can try page 3201.

18 A. Yes.

19 Q. If you look at the second row, the
20 class of claims is intercompany balances. The
21 treatment of claim reads, "On the effective
22 date, as part of the overall compromised body
23 in the plan, intercompany balances shall be
24 waived, canceled and discharged. Holders of
25 intercompany balances shall receive no

1 T. Marano

2 recovery on account of their claims."

3 Do you see that?

4 A. Yes, I do.

5 Q. And would you agree that that
6 treatment of intercompany balances is
7 different than the treatment of intercompany
8 balances that we looked at in the term sheet
9 marked as Marano Exhibit 6?

10 MR. LIPPS: Note my objection to
11 form. I think he said he didn't -- he
12 wasn't sure he could understand what
13 Exhibit 6 was saying, but go ahead.

14 MS. FISSELL: You can make an
15 objection to form. Stop testifying on the
16 record.

17 MR. LIPPS: And I'm not testifying,
18 and I appreciate that. But you also have
19 a good faith responsibility to really ask
20 him a question that's grounded in what
21 he's testified to.

22 But go ahead.

23 A. Again, based upon the poorly written
24 sentence, I did not understand the other
25 document; but it's clear to me that in this

1 T. Marano

2 one that there's -- that there's no value
3 ascribed to the intercompany claims.

4 Q. And you have no position on whether
5 it's different from the original PSA?

6 A. Because I can't understand the way
7 that was written, I just can't draw that
8 conclusion.

9 (A Discussion was Held off the
10 Record.)

11 BY MS. FISSELL:

12 Q. Do you recall a time where you and
13 your team began brainstorming a range of
14 possible claims against AFI?

15 A. Yes, I do.

16 Q. Do you recall when that was?

17 A. Probably summer of 2011, maybe.

18 Q. And was the focus of those claims on
19 claims between the debtors against AFI or
20 Ally?

21 A. Yes.

22 Q. And you asked Morrison Foerster to
23 look into certain areas?

24 A. Yes. We asked them to do an
25 investigation.

1 T. Marano

2 Q. Why did you ask them to do an
3 investigation?

4 A. We needed someone to. We weren't
5 sure at that point in time if we were going to
6 file. We were, you know, in the interest of
7 being prudent, we wanted to have our bases
8 covered if we had to file.

9 So we reached out to Morrison
10 Foerster because of their long relationship
11 with the firm, frankly, not a particularly
12 warm relationship between Morrison Foerster
13 and Ally, and in the interest of not spooking
14 the market or creating the impression we going
15 to file if we didn't know we were going to
16 file, we hired them to do the work.

17 Q. And at that time do you believe
18 there were certain claims that the debtors
19 might have against Ally?

20 A. We were told by Morrison Foerster --

21 MR. LIPPS: I don't want you to talk
22 about legal advice that you received.

23 A. Repeat your question. Let's see if
24 I can answer it.

25 Q. Okay.

1 T. Marano

2 At that time, did you believe that
3 there were certain claims that the debtors
4 might have against Ally?

5 MR. LIPPS: And I'll allow you to
6 answer, but I am going to instruct you not
7 to disclose any information that you
8 received from counsel.

9 THE WITNESS: I understand.

10 MR. LIPPS: If you can't answer it,
11 you can't answer it.

12 But go ahead if you can.

13 A. At the time we hired Morrison
14 Foerster, I actually didn't know.

15 Q. You also set up a special review
16 committee, as well?

17 A. For the claims?

18 Q. Yes.

19 A. I actually don't recall if we had a
20 committee to review the claims. We definitely
21 talked about it at board meetings. I don't
22 know if there was a committee.

23 Or -- no, at that point in time, I
24 don't think we had a committee in the summer
25 of '11.

1 T. Marano

2 Q. Did -- by December 2011 had the
3 ResCap board established a special review
4 committee?

5 A. I think we had a negotiating team.
6 Yes, we did, for -- I think that was John Mack
7 and Jonathan Ilany.

8 Q. And was one of the things that they
9 were tasked with was implementing a process
10 and procedure for the review and assessment of
11 potential claims arising in relation to
12 transactions with AFI?

13 MR. LIPPS: Objection to form, but
14 go ahead.

15 A. I know we had a committee. I don't
16 know, you know, if there was a committee, we
17 would have had rules and guidance for the
18 committee. I just don't know what we had.

19 Q. Okay.

20 MS. FISSELL: We'll mark as Marano
21 Exhibit 8, an excerpt from the examiner's
22 report. It's pages Roman Numeral III-244
23 through Roman numeral III-245.

24 MR. LIPPS: Just note my objection
25 on the record for the use of it. I think

1 T. Marano

2 even the judge has characterized it as
3 hearsay, but you may proceed.

4 MS. FISSELL: You are aware that
5 you're allowed to use hearsay in
6 depositions.

7 MR. LIPPS: I'm not stopping you.
8 I'm just objecting.

9 THE WITNESS: Do you want to number
10 this?

11 (A Discussion was Held off the
12 Record.)

13 (Marano's Exhibit 8, Excerpt from
14 Examiner's Report, was marked for
15 identification.)

16 BY MS. FISSELL:

17 Q. So you'll turn to page III-246,
18 Roman Numeral III-246.

19 MR. JOHNSON: Can you repeat that
20 page, please.

21 MS. FISSELL: It's 246.

22 MR. JOHNSON: Okay.

23 BY MS. FISSELL:

24 Q. Does this -- if you look at the
25 paragraph in the middle of the page, it says,

1 T. Marano

2 "Effective December 5, 2011, the ResCap board
3 established the special review committee."

4 A. Yes.

5 Q. And then for the purpose of -- and
6 I'll let you read that paragraph to yourself.

7 A. (Document Review.)

8 Okay. I've read it.

9 Q. Does that refresh your recollection
10 of whether the special review committee was
11 also tasked with implementing a process and
12 procedure for the review and assessment of
13 potential claims arising in relation to
14 transactions and interrelationships between
15 the debtors and AFI?

16 A. Yes.

17 Q. It does refresh your recollection?

18 A. It does.

19 Q. Okay.

20 And who did they hire to assist them
21 with that analysis?

22 MR. LIPPS: Objection to form.

23 A. I'm not sure -- you're talking about
24 their counsel?

25 Q. Did Ilany and Mack hire anyone to

1 T. Marano

2 assist them?

3 A. I have no idea. They would have had
4 access to Morrison & Cohen, but I don't know
5 if they hired anyone else. I don't recall.

6 Q. And who is Morrison & Cohen?

7 A. Those would -- Morrison & Cohen is
8 counsel to the independent committee
9 members -- board members.

10 Q. Do you know whether Morrison
11 Foerster or -- do you know whether Morrison
12 Foerster ever made a presentation to the
13 ResCap board regarding their analysis of
14 potential claims against Ally?

15 MR. LIPPS: And I will allow you to
16 respond to the fact of whether or not
17 there was a presentation, but I don't want
18 you to disclose any legal advice or
19 information that you received from counsel
20 as a result of their analysis.

21 Go ahead.

22 A. We did. The board did receive a
23 presentation, yes.

24 MS. FISSELL: The substance of the
25 presentation was disclosed in the

1 T. Marano

2 examiner's report. So you're taking the
3 position now that the presentation,
4 although the parts, at least, of the
5 presentation are disclosed in the
6 examiner's reports, which has been
7 publicly disclosed, are --

8 MR. LIPPS: There was a
9 confidentiality order and strict
10 restrictions on information that the
11 examiner was to receive. And it was never
12 our understanding nor intention to waive
13 any privilege that we have with respect to
14 communications that the lawyers for the
15 debtors provided to the board.

16 So I'm not going to allow him to
17 discuss legal advice that the board
18 received.

19 MS. FISSELL: I just want to make
20 sure the record is clear, so if I -- I'll
21 just ask the question and if you want to
22 make the objection --

23 MR. LIPPS: I'll instruct as
24 appropriate and let him answer as
25 appropriate.

1 T. Marano

2 MS. FISSELL: Okay.

3 BY MS. FISSELL:

4 Q. What -- what analysis -- strike
5 that.

6 Did MoFo identify any breach of
7 contract claims that the debtors may have
8 against Ally?

Plaintiff's
Objection
84:6-19
Lack of personal
knowledge (FRE
602)

9 MR. LIPPS: And I'll allow you to
10 answer to the extent you can answer
11 without revealing advice that you received
12 from Morrison Foerster. And if you can't,
13 then indicate that you'll follow my
14 instruction.

15 A. I was present at a slide show where
16 they put a list of claims up there. I don't
17 recall one way or the other if a breach of
18 contract claim was there. I just don't
19 recall.

20 Q. Was one of the claims that they had
21 on that slide presentation a claim related to
22 the tax allocation agreements?

23 MR. LIPPS: And, again, I'll
24 instruct you not to answer to the extent
25 you would reveal legal advice that you

1 T. Marano

2 received from the company.

3 A. We would have -- you know, I can't
4 answer it then.

5 MR. LIPPS: Then you can't answer
6 it. I'll instruct him not to answer it.

7 BY MS. FISSELL:

8 Q. Do you recall any of the specific
9 claims that were disclosed in that
10 presentation?

11 MR. LIPPS: I'll let you answer
12 "yes" or "no" to that.

13 A. Yes.

14 Q. What were they?

15 MR. LIPPS: I'm going to instruct
16 him not to answer to the extent it
17 requires you to reveal information and
18 legal advice that you received from
19 Morrison Foerster.

20 A. I can't answer it then.

21 Q. Do you know whether there was a
22 presentation also made to the Ally board
23 relating to claims that the debtors have
24 against Ally?

25 A. Yes.

1 T. Marano

2 Q. Who made that presentation?

3 A. Actually, I take that back. There
4 was a presentation to Michael Carpenter. I
5 actually don't know if the Ally board was part
6 of the presentation. I don't recall.

7 Q. Okay.

8 So there was a presentation to
9 Michael Carpenter about --

10 A. That's right. And I don't recall if
11 the board received a presentation -- the Ally
12 board received a presentation.

13 Q. Do you see a copy of the
14 presentation?

15 A. I don't think so, no.

16 Q. Were you at the presentation?

17 A. No, I don't recall being there, no.

18 Q. Do you know who made the
19 presentation?

20 A. My recollection is that -- I can't
21 recall which lawyers, but some lawyers from
22 Morrison Foerster were there and some lawyers
23 from Ally's firm were there.

24 My recollection -- yes, that's it.

25 That's all I know. They had a meeting.

1 T. Marano

2 Q. And do you know whether the
3 presentation made to the Ally board was in any
4 way different than the presentation -- I'm
5 sorry. The presentation that was made to
6 Michael Carpenter was in any way different
7 than the presentation made to the ResCap
8 board?

9 A. I don't --

10 MR. LIPPS: Objection. Calls for
11 speculation. Go ahead.

12 A. I have no idea.

13 Q. Did you have any conversations with
14 anyone at Ally regarding potential claims that
15 the debtors might have against Ally?

16 A. Yes.

17 Q. Who?

18 A. Michael Carpenter.

19 Q. Anyone else?

20 A. That's all I recall.

21 Q. What did you discuss with Michael
22 Carpenter?

23 A. Michael Carpenter told me that he
24 didn't think Ally owed ResCap anything.

25 Q. What did you tell him?

1 T. Marano

2 A. I said whether you owe us something
3 or not it's going to cost you, you know, some
4 money. And that's it.

5 Q. That was your entire conversation?

6 A. Yes.

7 Q. When was the conversation?

8 A. It would be towards the end of
9 ResCap being around, you know, probably
10 May 2012, maybe shortly thereafter.

11 Q. How long did you talk to him for?

12 A. A brief conversation.

13 Q. What do you mean by "brief"?

14 A. Minutes.

15 Q. So minutes can mean -- are you
16 saying anything less than 60 minutes?

17 A. Substantially --

18 MR. LIPPS: Objection.

19 A. A few minutes at a time. We did
20 not -- once, you know, in this time period we
21 weren't having lengthy meetings. A few
22 minutes.

23 Q. So that was your only conversation
24 with Michael Carpenter regarding the claims
25 that the debtors might have against Ally?

1 T. Marano

2 A. That's all I recall, yes.

3 Q. Do you recall anything else about
4 the conversation other than what you just
5 discussed?

6 A. No. That it was going to cost them
7 some real money.

8 Q. If you could turn to page Roman
9 Numeral III-252, to the second paragraph.

10 A. "In addition"?

11 Q. Yes.

12 The first sentence reads, "In
13 addition, the Morrison & Foerster presentation
14 noted that is arguable that ResCap and AFI
15 acted," quote, "as a single integrated
16 operation in certain respects during the post
17 TARP period."

18 Do you agree with that statement?

19 MR. LIPPS: Objection to form.

20 MR. DONOVAN: Objection to form.

21 A. I can't answer it because it would
22 be based upon, you know, advice we got from
23 counsel.

24 Q. You were the CEO of ResCap --

25 A. Yes.

1 T. Marano

2 Q. -- for a number of years. And in
3 your experience as CEO of ResCap, would you
4 agree that ResCap and AFI acted as a single
5 integrated operations in certain respects
6 during the post TARP period?

7 A. Not necessarily, actually.

8 Q. Why not?

9 A. While we may have shared certain
10 resources, we acted as separate and
11 independent companies. The organization was
12 extremely siloed. It was challenging to get
13 various members of different teams or
14 divisions to work together on anything.

15 So I wouldn't consider it to have
16 been an integrated organization. Not at all.

17 Q. Do you believe that \$2.1 billion
18 contribution from Ally to the estate
19 constitutes substantial consideration?

20 MR. LIPPS: Note my objection to
21 form.

22 A. I think it's a lot of money. I
23 don't know what "substantial consideration"
24 means. It's a lot of money.

25 Q. Will you be including in your

1 T. Marano

2 planned direct testimony anything about the
3 amount of Ally's contribution to the estate?

4 A. Yes.

5 Q. Will you be commenting on whether
6 it's substantial?

7 MR. LIPPS: Note my objection to
8 form.

9 A. Again, we haven't finished it, so I
10 don't know if that particular word -- but I'm
11 telling you here today, 2.1 billion is a lot
12 of money, and I would testify to that if I was
13 asked.

14 Q. Right now is your testimony planning
15 to include that?

16 MR. LIPPS: Objection. It's been
17 asked and answered.

18 Go ahead.

19 A. Again, I know that \$2.1 billion
20 number is in there. I don't recall if the
21 word "substantial" or some other fancy legal
22 term is in there, you know, but I maintain
23 that's a lot of money.

24 Q. In your planned direct testimony?

25 MR. LIPPS: Objection.

1 T. Marano

2 A. I maintain -- I'm telling you that
3 2.1 billion is in there. The adjectives in
4 front of it, I don't recall.

5 Q. Have you done anything to evaluate
6 Ally's \$2.1 billion contribution net of tax
7 benefits to Ally?

8 A. No.

9 Q. Did you review the examiner's
10 report?

11 A. Yes.

12 Q. Do you recall reviewing
13 Footnote 1812 in the examiner's report?

14 A. I would have to see that footnote.
15 I'm sorry.

16 Q. Okay.

17 MR. LIPPS: I'm disappointed.

18 A. Is it in here?

19 Q. Some footnotes we know by heart.

20 MR. LIPPS: I'm disappointed, you
21 don't remember that footnote without
22 looking.

23 (A Discussion was Held off the
24 Record.)

25

1 T. Marano

2 BY MS. FISSELL:

3 Q. I'm going to show you what's been
4 previously marked as Aretakis Exhibit 3.

5 MR. LIPPS: While he's looking at
6 that, I'll just make the same notation on
7 the record. This has been indicated by
8 the judge as being hearsay, and I'll
9 object to it.

10 BY MS. FISSELL:

11 Q. If you'll turn to the last page,
12 you'll find Footnote 1812.

13 A. Okay.

14 Q. Do you recall reviewing this
15 footnote?

16 A. Yes. Yes. I recall this section.

17 Q. And do you recall in particular the
18 calculations in Footnote 1812?

19 A. Yes.

20 Q. Did you do anything after you
21 reviewed this calculation?

22 A. Did I do anything?

23 Q. Did you ask any professionals about
24 it?

25 MR. LIPPS: Well, I don't want you

1 T. Marano

2 disclosing any --

3 MS. FISSELL: I didn't ask for the
4 substance. I asked whether he --

5 MR. LIPPS: Let me just finish my
6 objection.

7 I don't want you to disclose any
8 substance of conversations with counsel.

9 I will allow you to answer fact of
10 consultation, if it did occur.

11 A. Okay.

12 I talked to my CFO about this, about
13 all the tax -- pardon me -- about these tax
14 issues raised here.

15 Q. And what did you discuss with him?

16 A. We discussed the fact that since
17 ResCap is not a tax-paying entity and the fact
18 that you can't transfer these NOLs to a third
19 party, that, yes, essentially ResCap was a
20 disregarded entity and it was bankrupt, so the
21 benefit of these NOLs would not follow.

22 I struggle to understand how the
23 examiner thought there was value here, again,
24 especially since ResCap was not a tax-paying
25 entity.

1 T. Marano

2 Q. Did you discuss with -- when you
3 refer to your CFO, you're referring to
4 Mr. Whitlinger?

5 A. Yes.

6 Q. Did you discuss with Mr. Whitlinger
7 that this calculation shows that Ally will get
8 a tax benefit from the -- its contribution to
9 the estate?

10 MR. LIPPS: Objection to form.

11 Go ahead.

12 A. That I did not discuss.

13 Q. If you'll look at the line that
14 reads, "Less assumed contribution by the AFI
15 to creditor's recovery." And that it's
16 750 million that at that time was the amount
17 of Ally's proposed contribution.

18 MR. LIPPS: What's the question?

19 BY MS. FISSELL:

20 Q. I asked if he saw that on here.

21 A. Yes.

22 Q. You see that.

23 And did you discuss that with
24 your -- Mr. Whitlinger?

25 A. No, I just discussed whether or not

1 T. Marano

2 the tax losses had any value whatsoever to a
3 third party.

4 Q. To a third party other than AFI?

5 MR. JOHNSON: I object to the form.

6 A. Yes. To a nonaffiliated entity.

7 Q. Did you discuss anything else with
8 Mr. Whitlinger?

9 A. No.

10 MR. LIPPS: On that topic or related
11 to that?

12 MS. FISSELL: Related to
13 Footnote 1812.

14 A. No.

15 Q. Did you discuss Footnote 1812 with
16 anyone else?

17 A. I don't recall anyone else.

18 Q. And you see that the examiner says
19 at the end of the footnote, "Any additional
20 amount that AFI contributes towards the
21 recovery would produce cancellation of
22 debt-to-income on a dollar-for-dollar basis"?

23 MR. LIPPS: Objection to form.

24 BY MS. FISSELL:

25 Q. At the very bottom.

1 T. Marano

2 A. Yes, I see what it says.

3 Q. And did you discuss that with
4 anyone?

5 A. No.

6 Q. Are you aware that the ad hoc group
7 filed an objection to the disclosure statement
8 filed by the plan proponents?

9 A. The ad hoc group being the JSNs?

10 Q. Yes.

11 A. I am aware they filed an objection.

12 Q. Okay.

13 I want to show you a document marked
14 as Aretakis 10.

15 A. Are there multiple copies here or --

16 Q. Yes. If you'll turn to, I think
17 it's the fourth to last page of the document.

18 You see that this is --

19 A. Can I just get the page number on
20 the bottom because it's --

21 Q. Yes. It's page 2. It's a different
22 page 2. Yes. Exhibit --

23 A. C?

24 Q. -- D. Exhibit D, page 2.

25 A. Got it. Okay.

Plaintiff's
Objection
97:12-99:7
Inadmissible
hearsay (FRE
802), lack of
personal
knowledge
(FRE 602),
lack of
foundation
(FRE 602, 901,
903)

1 T. Marano

2 Q. Do you recall reviewing this table?

3 A. No, I don't recall this page.

4 Q. Do you see that this shows the same
5 table that was in Footnote 1812 in the
6 examiner's report?

7 MR. LIPPS: Objection to form.

8 A. And the layout's a little different,
9 but it's similar. I see what you're doing
10 because it has more fields.

11 Q. Right.

12 And that there's been a comment --
13 sorry, a column added, and under the row "Less
14 Assumed Contribution by AFI to Creditor's
15 Recovery," it shows the examiner's report
16 number of 750, and then it shows the
17 2.1 billion.

18 A. Right. There's two columns added to
19 this report, yes.

20 Q. Right.

21 And you'll see that the last row,
22 the examiner had estimated tax benefits to --
23 the value of tax benefits to AFI at
24 1.77 billion; right?

25 A. Yes.

1 T. Marano

2 Q. And that using the \$2.1 billion
3 number, it's -- the value of the tax benefit
4 to AFI are 2.2 billion?

5 MR. LIPPS: Objection to form.

6 A. According to the chart, I see it's
7 2.2, yes.

8 Q. Hypothetically, if Ally received tax
9 benefits greater its \$2.1 billion payment,
10 would that affect your conclusion that
11 Ally's -- I think your words were "paying a
12 lot of money"?

Plaintiff's
Objection
99:8-100:17
Lack of
personal
knowledge
(FRE 602),
inadmissible
lay opinion

13 MR. LIPPS: Objection to form and
14 assumptions.

15 MR. JOHNSON: Objection to form.

16 Hypothetical.

17 A. I never factored in -- as to what
18 Ally should pay, I never factored in whether
19 there was, you know, a benefit to writing a
20 big check or not.

21 So I'm not an accountant. I'm not a
22 tax accountant. I just never even considered
23 the tax issue in the context of the way you're
24 presenting it.

25 Q. But, hypothetically, if they

1 T. Marano

2 received benefits greater than their actual
3 payment, would that affect your conclusion?

4 MR. LIPPS: Objection. Asked and
5 answered. Also without foundation.

6 Go ahead.

7 MR. JOHNSON: Objection.

8 A. All I know is it costs them billions
9 and billion dollars of dollars to get -- to
10 settle this process. I can't come to the
11 conclusion. I don't know.

12 Q. So your answer is you don't know
13 whether it would change your analysis?

14 MR. LIPPS: Objection.

15 Mischaracterizes.

16 A. Not at all. I don't know. I just
17 don't know. I'm not a tax person.

18 Q. So you feel you need to be a tax
19 person to assess whether if Ally received tax
20 benefits greater than 2.1 billion, whether
21 that would affect your conclusion regarding
22 whether Ally's contribution was significant?

23 MR. LIPPS: Objection to form.

24 Mischaracterizes.

25 Go ahead.

1 T. Marano

2 A. Again, I think Ally contributed an
3 enormous amount of money. I don't know
4 whether or not they're getting tax benefits
5 for this or not. I'm not a tax person. I
6 don't know. I can't draw that conclusion.

7 Q. Right.

8 I understand that you don't know as
9 a matter of course. I'm just saying,
10 hypothetically, if you were to learn that they
11 were getting a tax benefit greater than the
12 actual payment amount, would that affect your
13 conclusion that they are making an enormous
14 payment?

15 MR. JOHNSON: Objection to form.

16 MR. LIPPS: Objection to form and
17 assumptions.

18 A. No, it wouldn't alter my opinion
19 either way, they had to write a big check, no.

20 Q. I believe you testified earlier
21 you're not familiar with who James Aretakis
22 is?

23 A. No.

24 MR. LIPPS: Objection. Asked and
25 answered.

Page 102

1 T. Marano

2 A. Yes. I don't recall who he is.

3 MS. FISSELL: I'm going to mark as Plaintiff's
4 Marano Exhibit 9 the transcript of the Objection
5 deposition of James Aretakis from 102:3-103:20:
6 November 6, 2013. Inadmissible
hearsay (FRE
802), lack of
personal
knowledge
(FRE 602),
inadmissible
lay opinion,
irrelevant (FRE
401, 402)

7 (Marano's Exhibit 9, Transcript of Plaintiff's
8 Deposition of James Aretakis dated Objection
9 November 6, 2013, was marked for 102:3-103:20:
10 identification.) Inadmissible
lay opinion,
irrelevant (FRE
401, 402)

11 BY MS. FISSELL:

12 Q. If you'll turn to page 9 of the Plaintiff's
transcript. Objection

14 A. On the transcript --

15 Q. Yes. Page 9 of the transcript, not Plaintiff's
of the document. If you'll look at line 6. Objection

17 "Question: What's your position at Plaintiff's
Ally?" Objection

19 "Answer: General tax counsel."

20 Do you see that question was asked Plaintiff's
and that answer was given? Objection

22 A. Yes.

23 Q. Okay.

24 If you'll turn to page 53 --

25 MR. DONOVAN: Objection to form.

1 T. Marano

2 Q. -- of the transcript.

3 A. I'm sorry, what page?

4 Q. 53 of the transcript. It's page 14
5 of the document. Look at line -- page 53,
6 line 13.

7 "Question: At the end of the day,
8 if one's liabilities are known and there is a
9 taxable event in the bankruptcy, is it
10 possible that Ally will receive a tax benefit
11 in excess of \$2.1 billion?

12 "Mr. McCain: Objection to form.

13 Vague, overbroad, calls for speculation.

14 "Answer: Is it possible? Yes, it's
15 possible."

16 You see that Mr. Aretakis gave that
17 testimony?

18 A. Yes.

19 MR. LIPPS: Note my objection to
20 form.

21 BY MS. FISSELL:

22 Q. Does that change your opinion that
23 Ally's contributing an enormous amount of
24 money to the estate?

25 MR. LIPPS: Objection.

1 T. Marano

2 A. No. They wrote a check. They're
3 contributing money. The money would not be in
4 the estate if Ally didn't write the check.

5 MS. FISSELL: I think we're done,
6 but we're going to take a five-minute
7 break.

8 THE VIDEOGRAPHER: The time is
9 4:15 p.m. We're coming off the record.

10 (Recess taken from 4:15 p.m. to
11 4:28 p.m.)

12 THE VIDEOGRAPHER: The time is
13 4:28 p.m. We're going back on the record.

14 BY MS. FISSELL:

15 Q. Are you aware that Berkshire
16 Hathaway holds JSN bonds?

17 A. I'm not aware of their current
18 position. I don't know.

19 Q. Are you aware that they had a
20 position at the time of the signing of the
21 initial PSA?

22 A. I know they held JSNs at one point
23 in time. I don't remember when they traded
24 out of them, or if they traded out of them.

25 Q. Are you aware that they never signed

1 T. Marano

2 the initial PSA?

3 A. No, I don't recall that they did or
4 didn't.

5 Q. And you have no -- do you know
6 whether Berkshire Hathaway held more than the
7 aggregate number of -- held more bonds than
8 the aggregate number of JSNs that signed the
9 PSA?

10 A. Again, I don't recall how many they
11 held. I know they held juniors and they held
12 the senior unsecureds. I just don't recall
13 how many they held.

14 Q. Did you -- were you aware that they
15 held a significant number of JSNs?

16 A. I believe -- I knew they held a lot
17 of our bonds in all the categories, like, you
18 know, hundreds -- hundreds and hundreds of
19 millions. Maybe over a billion.

20 Q. And are you aware that the examiner
21 was appointed at their request?

22 A. Yes.

23 MS. FISSELL: No further questions.

24 MR. LIPPS: Anybody else have any
25 questions?

1 T. Marano

2 MR. DONOVAN: No questions.

3 MR. MATZA-BROWN: No questions.

4 MR. LIPPS: Going, going, gone.

5 Thank you.

6 THE VIDEOGRAPHER: The time is

7 4:30 p.m.

8 We're going off the record.

9 (The deposition was concluded at
10 4:30 p.m.)

11 (The exhibits were retained by the
12 court reporter to be attached to the
13 transcript.)

14

15

16

17

18

19 TOM MARANO

20

21 Subscribed and sworn to before me

22 this day of 2013.

23

24

25

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1 T. Marano

2

3 C E R T I F I C A T E

4

5 STATE OF NEW YORK)

6) ss.:

7 COUNTY OF NEW YORK)

8

9 I, THOMAS A. FERNICOLA, Registered

10 Reporter and Notary Public within and for

11 the State of New York, do hereby certify

12 that the within is a true and accurate

13 transcript of the proceedings held on

14 November 11, 2013.

15 That I am not related to any of the

16 parties to this action by blood or

17 marriage; and that I am in no way

18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto

20 set my hand this 11th day of November,

21 2013.

22

23

24 THOMAS A. FERNICOLA, RPR

25

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1	T. Marano
2	----- INDEX -----
3	ATTORNEY PAGE
4	Ms. Fissell 7
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1 T. Marano

2 ----- EXHIBITS -----

3 MARANO'S

4 DESCRIPTION	PAGE	LINE
5 Exhibit 1 Transcript of the	48	9
6 deposition of Thomas Marano dated		
7 November 12, 2012,		
8 Exhibit 2 Agreement between	48	13
9 Residential Capital, LLC, Ally		
10 Financial, Inc. and Davidson		
11 Kempner Capital Management, LLC,		
12 Exhibit 3 Document, Bates No.	54	3
13 AHG20002731,		
14 Exhibit 4 Document, Bates No.	57	14
15 AHG20002759,		
16 Exhibit 5 Document, Bates No.	60	18
17 AHG20002748,		
18 Exhibit 6 Joint Chapter 11 Plan of	66	5
19 Reorganization,		
20 Exhibit 7 Notice of Filing of	74	5
21 Corrected Solicitation Version of		
22 the Disclosure Statement and Joint		
23 Chapter 11 Plan,		
24		
25		

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1 T. Marano

2 ----- EXHIBITS (Cont'd) -----

3 MARANO's

4 DESCRIPTION PAGE LINE

5 Exhibit 8 Excerpt from Examiner's 80 11

6 Report,

7 Exhibit 9 Transcript of Deposition 102 5
8 of James Aretakis dated November 6,
9 2013,

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1 T. Marano

2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name: In Re: Residential Capital, LLC

4 Dep. Date: November 11, 2013

5 Deponent: TOM MARANO

6 Reason codes:

- 7 1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

9 Page ____ Line ____ Reason _____

10 From _____ to _____

11 Page ____ Line ____ Reason _____

12 From _____ to _____

13 Page ____ Line ____ Reason _____

14 From _____ to _____

15 Page ____ Line ____ Reason _____

16 From _____ to _____

17 Page ____ Line ____ Reason _____

18 From _____ to _____

21 TOM MARANO

23 Subscribed and sworn to before me

24 this day of

2013.

Deposition Errata Sheet

In re Residential Capital, LLC, et al.,
Case No. 12-12020(MG)

Deponent: Thomas Marano
Deposition Date: November 11, 2013

Citation	Testimony
31:12	to get a settlement with DOJ and the Attorney
57:4	and when you Lew Kruger got involved, it --
65:2	a document that anyone everyone else had signed to make
65:18	you aware that there was a planned support
77:14	the market or creating the impression we were going
101:19	either way. They they had to write a big check. No. no.

Date: 11/15/13

Signed: 
Thomas Marano